

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 15-2801(L), 15-2805(Con)

Caption [use short title]

Motion for: Leave to File As Amicus Curiae in
Support of the Petition of Appellees NFLPA
and Tom Brady for Rehearing or Rehearing En Banc

National Football League Management Council, et.
al. v. National Football League Players Association,
et. al.

Set forth below precise, complete statement of relief sought:

Leave to File Amicus Brief Pursuant to FRAP Rule 29

MOVING PARTY: New England Patriots, L.L.C.

☐ Plaintiff

☐ Defendant

☐ Appellant/Petitioner

☐ Appellee/Respondent

OPPOSING PARTY: National Football League Management Council

MOVING ATTORNEY: Daniel L. Goldberg

[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: Paul D. Clement

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Washington, D.C 20001

Court-Judge/Agency appealed from: Southern District of New York- Judge Berman

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain): _____

Opposing counsel's position on motion:

☐ Unopposed ☐ Opposed ☒ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☐ No ☒ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
INJUNCTIONS PENDING APPEAL:

Has request for relief been made below?

☐ Yes ☐ No

Has this relief been previously sought in this Court?

☐ Yes ☐ No

Requested return date and explanation of emergency: _____

Is oral argument on motion requested?

☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes ☒ No If yes, enter date: _____

Signature of Moving Attorney:

/s/ Daniel L. Goldberg

Date: May 25, 2015

Service by: ☒ CM/ECF

☐ Other [Attach proof of service]

No. 15-2801(L)

15-2805, 15-3228 (Con)

United States Court of Appeals for the Second Circuit

NATIONAL FOOTBALL LEAGUE MANAGEMENT COUNCIL,
PLAINTIFF-COUNTER-DEFENDANT-APPELLANT

AND

NATIONAL FOOTBALL LEAGUE, DEFENDANT-APPELLANT

AND

MICHELLE MCGUIRK, APPELLANT

v.

NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION,

ON ITS OWN BEHALF AND ON BEHALF OF TOM BRADY,

DEFENDANT-COUNTER-CLAIMANT-APPELLEE

AND

TOM BRADY, COUNTER-CLAIMANT-APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK, NOS. 15-5916, 15-5982

MOTION OF NEW ENGLAND PATRIOTS, L.L.C. FOR LEAVE TO FILE AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION OF APPELLEES NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION AND TOM BRADY FOR REHEARING OR REHEARING EN BANC

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**MOTION OF NEW ENGLAND PATRIOTS, L.L.C. FOR LEAVE TO FILE
AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION OF APPELLEES
NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION AND TOM
BRADY FOR REHEARING OR REHEARING EN BANC**

Pursuant to Federal Rule of Appellate Procedure 29(b), counsel for prospective *amicus curiae* the New England Patriots, L.L.C. (the “Patriots”) respectfully moves for leave to file the attached BRIEF FOR THE NEW ENGLAND PATRIOTS AS *AMICUS CURIAE* SUPPORTING THE PETITION OF APPELLEES NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION AND TOM BRADY FOR REHEARING OR REHEARING EN BANC.

The Patriots have a strong interest in the outcome of this appeal, as the punishment currently imposed upon Mr. Brady will leave the team without its All-Pro starting quarterback for the first 25% of the 2016 regular season. Mr. Brady has led the Patriots to four Super Bowl wins and thirteen division titles. To state the obvious, the Patriots will be severely adversely affected by the loss of Mr. Brady for four of the Patriots’ sixteen regular season games.

Furthermore, no organization is more familiar with the events underlying the League’s investigation, or better knows the character and integrity of Mr. Brady, than the Patriots. The Patriots strongly believe that nobody tampered with the footballs used during the 2015 AFC Championship Game; that science -- and, specifically, the Ideal Gas Law -- fully explains the PSI levels of the footballs that day; and, above all, that Mr. Brady neither knew of nor was involved in any

scheme to tamper with the PSI of footballs used in that or any other game. The Patriots have a keen interest in making sure that Mr. Brady is not unjustly punished through a fundamentally unfair process.

The Patriots' Amicus Brief provides the Court with a discussion and analysis of certain fundamental flaws in the Commissioner's decision including, in particular, his denial of Mr. Brady's motion to obtain access to the Paul Weiss law firm's interview notes for key League witnesses. The Patriots' Amicus Brief explains the material significance of the notes from interviews of seven NFL witnesses, whose recollections regarding the sequence of events at halftime are vital to the basic premise of the Wells Report that science does not fully explain the halftime PSI of the Patriots' footballs. The Patriots, intimately familiar with the factual record in this case, are uniquely situated to assist the Court in understanding the "pertinen[ce] and material[ity]" of this evidence, which the Commissioner impermissibly refused Mr. Brady access to, and hence "refused to hear," in violation of Section 10 of the Federal Arbitration Act. *See* 9 U.S.C. § 10 (a) (3). The Patriots are also uniquely suited to call the Court's attention to the fundamental unfairness of the entire process that led the Commissioner to impose unprecedented, unjustified and unsupported penalties on Mr. Brady.

WHEREFORE, the undersigned counsel respectfully requests that the Court grant its motion for leave to file the attached *amicus curiae* brief.

Dated: May 25, 2016

Respectfully submitted,

/s/ Daniel L. Goldberg

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CERTIFICATE OF SERVICE

I, Daniel L. Goldberg, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 25, 2016.

/s/ Daniel L. Goldberg

Daniel L. Goldberg